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JUL - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 8, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Stop Code 1170
Washington, D.C. 20554

Re: MM Docket No. 93-180
RM-8237
Bowie, Texas

Dear Mr. Caton:

Transmitted herewith, on behalf of Bowie-Nocona Broadcasting Co., Inc., licensee of broadcast station KRJT-FM, Bowie, Texas, are an original and four (4) copies of its Petition for Immediate Reconsideration in connection with the above-referenced proceeding.

Should any question arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

Patricia A. Mahoney
Patricia A. Mahoney
Counsel for Bowie-Nocona
Broadcasting Co., Inc.

PAM/dlr

Enclosures

cc: Mr. Michael C. Ruger (with enclosure) (by hand)
Jeffrey D. Southmayd, Esquire (with enclosure)

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BUL - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
) MM Docket No. 93-180
Amendment of Section 73.202(b),) RM-8237
Table of Allotments,)
FM Broadcast Stations,)
Bowie, Texas)

Directed to: Chief, Allocations Branch
Mass Media Bureau

PETITION FOR IMMEDIATE RECONSIDERATION

Bowie-Nocona Broadcasting Co., Inc. (Bowie-Nocona), licensee of FM broadcast station KRJT-FM, Bowie, Texas, by its attorney, hereby respectfully petitions for immediate reconsideration of the Notice of Proposed Rule Making, DA 93-722 (NPRM), that was released on June 30, 1993, in the above-referenced proceeding. In support whereof, the following is submitted:

The NPRM Is Premised On Inaccurate Information

Bowie-Nocona is the licensee of Station KRJT-FM, Bowie, Texas. KRJT-FM is presently allotted Channel 264C3 at Bowie. In the NPRM, the Commission proposes to substitute Channel 264A for Channel 264C3 at Bowie. This action is premised on inaccurate information. The NPRM states that

"To date Bowie Nocona has not filed a Form 301 to upgrade Station KRJT-FM to a Class C3 facility. Therefore, Bowie Nocona is deemed to have abandoned its interest in the Class C3 allotment."

That statement is inaccurate. Bowie-Nocona tendered an application on FCC Form 301 on May 27, 1993. It was received at

the Commission on May 28 and given the file number BPH-930528IB. By June 16, 1993, when the NPRM was adopted, and June 30, 1993, when the NPRM was released, Bowie-Nocona's application had already appeared on two public notices: as received, June 10, 1993; and as accepted for filing and tender, June 14, 1993. See Attachments 1-2, attached.

Obviously, the NPRM rests on the mistaken premise that Bowie-Nocona has no interest in its C3 allotment. As Bowie-Nocona's application illustrates, it very definitely wants its upgrade. See also Attachment 3. Since the NPRM's basic premise was flawed, it should be immediately vacated. At the very least it should be corrected to reflect that Bowie-Nocona's application is entitled to consideration with the proposed petition for rulemaking. See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992).

Moreover, the petitioner in the NPRM, Central Oklahoma Radio Corporation (CORC), licensee of Station KFXT(FM), Sulphur, Oklahoma (not Sulphur, Louisiana, as indicated throughout the NPRM), was advised that Bowie-Nocona intended to file an application before Bowie-Nocona's application was filed. On May 18, 1993, CORC's President¹ and General Manager, Ken Austin, contacted Everett C. Mason, President of Bowie-Nocona, and asked

¹Bowie-Nocona has been unable to locate any ownership report for CORC or KFXT(FM) at the Commission. Bowie-Nocona assumes that Mr. Austin's title of President and General Manager in the 1993 Broadcasting & Cable Yearbook at B-289 is correct.

Mr. Mason what his intentions were with respect to KRJT-FM. Mr. Mason told Mr. Austin that Bowie-Nocona intended to file an application shortly to implement its C3 allotment. See Attachment 3 hereto. CORC apparently decided not to supplement its Petition for Rulemaking to reveal that fact.

Additional Irregularities

There are additional irregularities in the handling of CORC's Petition for Rulemaking and pending application, to Bowie-Nocona's detriment. CORC's application (BPH-921023IB) is unacceptable for filing and should have been dismissed.² See Attachment 4 hereto. In its application, CORC requested that Bowie-Nocona's Station KRJT-FM be downgraded. Yet CORC never served Bowie-Nocona or its counsel with a copy of its application.

Rather than dismissing the unacceptable application, the FM Branch advised CORC by letter of April 1, 1993 (neither Bowie-Nocona nor its counsel was provided with a copy), that its application could be amended within 30 days, pursuant to Section 73.3522(a)(6) of the rules, to correct its deficiencies. See Attachment 4 hereto. See also 47 C.F.R. § 73.3564(a). To the best of Bowie-Nocona's knowledge, CORC has not filed any amendment to its unacceptable application, yet the application remains pending. See Attachment 5. Instead of amending, on

²It was also apparently filed after expiration of the 90 day period authorized by the Report and Order in MM Docket No. 91-343, in which CORC's allotment for Sulphur was upgraded to C2 status.

April 28, 1993, CORC sent the Chief of the FM Branch an ex parte letter asking that its application be "held in abeyance." See Attachment 6. Again, neither Bowie-Nocona nor its counsel was served with a copy of the letter.

CORC's application remains unacceptable and should be dismissed. It certainly should provide no support for adoption of the NPRM. Yet the NPRM discusses the pending application as if it provides a reason for downgrading KRJT-FM.

Also, on April 28, 1993, CORC filed its Petition for Rulemaking (Petition) in this proceeding. Although Fletcher, Heald & Hildreth has represented Bowie-Nocona and has been its counsel of record at the FCC for decades, CORC did not serve the undersigned counsel or her firm with a copy of the Petition!

It should also be noted that, although Bowie-Nocona did receive a letter dated April 1, 1993, from the Commission notifying it that CORC had filed its application, Bowie-Nocona did not receive the "April 1" letter until several weeks after it was apparently dated. In fact, the Commission's own file copy of the letter indicates that it was not even mailed until sometime after 4:03 p.m. on April 5, 1993, despite the date it bears. See

the proceeding be served on the licensee of KRJT-FM or its counsel!

CORC's Public Interest Showing Is Misleading

Most importantly, CORC failed to demonstrate how its proposal would serve the public interest. What CORC did submit in its Petition to assert that the public interest would be served by its proposal was misleading and disingenuous. CORC noted that it had filed an application to implement its upgrade to a Class C2 facility and that its application conflicts with the KRJT-FM Class C3 allotment. CORC then stated that

"The KFXT application, if approved, will allow [CORC] to greatly expand the service area for the station.^{2/} The Commission has consistently found that such an increase in service area is inherently in the public interest."

In footnote 2, CORC noted that "KFXT is presently a Class A operation with a limited service area." See CORC Petition at 2.

These representations are misleading. The Commission already twice authorized an expansion of KFXT's service from its present Class A operation and "limited service area" when the Commission (1) upgraded KFXT's channel to a Class C3 operation in the same proceeding in which KRJT-FM's channel was upgraded, see Report and Order in MM Docket No. 89-234, 5 FCC Rcd 2152, 2165 (MM Bureau, Allocations, 1990), and again (2) when the Commission upgraded KFXT's channel to a Class C2 station in a rulemaking proceeding (MM Docket No. 91-343) that has already been concluded. KFXT apparently decided not to implement its Class C3

upgrade. Instead, CORC maintained KFXT's status as a Class A operation and petitioned for the upgrade to C2 status.

According to its own representations before the Commission in the C2 rulemaking proceeding, CORC can implement its C2 upgrade and "greatly expand the service area" of its station KFXT without a downgrade of KRJT-FM! In its "Petition for Rulemaking and Order to Show Cause," filed October 30, 1991, which led to CORC's C2 upgrade in MM Docket No. 91-343, CORC included an engineering study that CORC stated "indicates that the subject modification can be effectuated by KFXT from its currently licensed geographic coordinates without any other change in the Table of Allotments." See Attachment 8 hereto (emphasis added). Indeed, the Allocations Branch accepted CORC's representations and noted in both the Notice of Proposed Rule Making³ and Report and Order⁴ in MM Docket No. 91-343 that CORC's KFXT(FM) could be upgraded to Class C2 status at its current site. The Notice of Proposed Rulemaking in MM Docket 91-343 stated⁵:

"We believe the public interest would be served by proposing the substitution of Channel 265C2 for Channel 265C3 at Sulphur, Oklahoma, since it could provide the community with a wide coverage area FM service and enable Station KFXT(FM) to expand its service area. Channel 265C2 can be

³Amendment of Section 73.202(b) (Sulphur, Oklahoma), DA 91-1435 (MM Bur., released Nov. 29, 1991).

⁴Amendment of Section 73.202(b) (Sulphur, Oklahoma), DA 92-599 (MM Bur., released May 22, 1992).

⁵Similar language appeared in the Report and Order.

allotted to Sulphur in compliance with the Commission's minimum distance separation requirements at the station's presently licensed transmitter site.¹/"

Footnote 1 gave the current KFXT(FM) coordinates as 34°32'57" North Latitude, 96°58'34" West Longitude. The KFXT(FM) application now pending proposes a transmitter site at: 34°26'25" North Latitude, 97°12'09" West Longitude. See BPH-921023IB.

CORC's Petition misleadingly implies that the downgrading of KRJT-FM is necessary for CORC to implement its upgrade; but that is obviously untrue, as evidenced by CORC's own representations to the Commission. It is very curious that CORC would obtain an upgrade for its own station by representing in the rulemaking proceeding that no other change would be necessary to the Table of Allotments and then subsequently try to obtain a downgrade of KRJT-FM surreptitiously through an application that was not even served on the licensee of KRJT-FM.

Conclusion

For the foregoing reasons, the NPRM should be vacated and CORC's Petition should be denied. CORC has admitted that it can achieve its upgrade to a Class C2 station and greatly expand its service area at its current site without any downgrading of KRJT-FM. Bowie-Nocona has demonstrated that it has not abandoned its intent to upgrade its facility. Contrary to CORC's representations, CORC's proposal will disserve the public interest.

Even if the staff decides that it must invite comment on CORC's Petition, the NPRM must be vacated, corrected, and re-issued to reflect that Bowie-Nocona has filed an application that is entitled to consideration and that comments and reply comments must be served on Bowie-Nocona's counsel.⁶

WHEREFORE, for the foregoing reasons, it is respectfully requested that the above-referenced NPRM be immediately reconsidered and vacated and that the above-referenced CORC Petition be denied.

Respectfully submitted,

BOWIE-NOCONA BROADCASTING CO., INC.

By:


Patricia A. Mahoney

Its Attorney

FLETCHER, HEALD & HILDRETH
11th Floor
1300 North 17th Street
Arlington, Virginia 22209
(703) 812-0400

July 7, 1993

⁶References to "Sulphur, Louisiana" should also be corrected.

ATTACHMENT 1

FM BROADCAST STATION APPLICATIONS RECEIVED BUT NOT YET ACCEPTED FOR TENDER

| | | | | |
|----|----------|---------------------|---|---|
| NY | 930527MI | NEW 94.1MHZ | AUBURN CABLEVISION, INCORPORATED BRIGHTON , NY | CP FOR A NEW STN ON FREQ: 94.1MHZ; ERP: 3.2KW(H&V); HAAT: 456 FEET/139 METERS(H&V) 43 10 37 77 28 39 |
| NY | 930527MJ | NEW 94.1MHZ | BRIGHTON BROADCASTING, L.P. BRIGHTON , NY | CP FOR A NEW STN ON FREQ: 94.1MHZ; ERP: 6.0KW(H&V); HAAT: 97 METERS(H&V) 43 08 07 77 35 07 |
| NY | 930528MC | NEW 106.9MHZ | MANIAC COMMUNICATIONS LAKEWOOD , NY | CP FOR NEW FM ON FREQUENCY: 106.9 MHZ.; ERP: 25.0 KW O(H&V) HAAT: 100 METERS (H&V) |
| OH | 930528MB | NEW 98.7MHZ | ROBERT S. TRIPLETT MCARTHUR , OH | CP FOR NEW FM ON FREQ: 98.7 MHZ.; ERP: 6.0 KW (H&V); HAAT: 100 METERS (H&V) |
| TX | 930527IE | KOKE 104.3MHZ | RADIO LEE COUNTY GIDDINGS , TX | CP TO MAKE CHGS; ERP: 100KW(H&V); HAAT: 299 METERS(H&V); TL: SOUTH OF SH 535, 4 MILES WEST OF ROSANKEE, BASTROP COUNTY, TEXAS ON COUNTY ROAD 238; FREQ: 268C1; CHANGE CLASS C1 PER MM DOCKET 89-459. |
| TX | 930528IB | KRJT-FM 100.7MHZ | BOWIE NOCONA BROADCASTING CO., INC. BOWIE , TX | CP TO MAKE CHGS; CHG: ERP: 6.25 KW (H&V); HAAT: 132.6 METERS (H&V); CHANGE CLASS TO C3 |
| WI | 930526IC | WAUN-FM 92.7MHZ | HARBOR CITIES BROADCASTING, INC. KAWAUNEE , WI | CP TO MAKE CHGS; ERP: 6.0KW(H&V); HAAT: 96 METERS(H&V) |

FM BROADCAST STATION APPLICATIONS ACCEPTED FOR FILING
(MINOR CHANGE APPLICATIONS ARE SIMULTANEOUSLY ACCEPTED FOR TENDER)

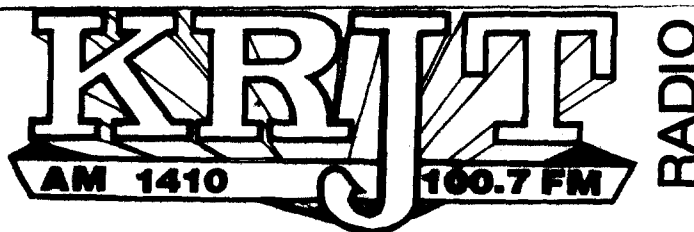
| | | | | |
|---------|----------|------------------|---|---|
| CA BMPH | 930527JB | KOCN 104.9MHZ | C. R. PASQUIER PROPERTIES, INC. PACIFIC GROVE , CA | MP(BPH-910327IC) FOR EXTENSION OF TIME. 1ST REQUEST |
| GA BMPH | 930528JA | WDDQ 92.1MHZ | WILLIAMS INVESTMENT COMPANY ADEL , GA | MP (BPH-910311IC) FOR EXTENSION OF TIME 1ST REQUEST |
| OH BMPH | 930526JE | WZJX 94.5MHZ | MIAMI VALLEY COMMUNICATIONS, INC. ENGLEWOOD , OH | MP(BPH-890928MH AS MOD) FOR EXTENSION OF TIME. 1ST REQUEST |
| PA BPH | 930526IB | WCCZ 97.3MHZ | RAYMARK BROADCASTING CO., INC. SPANGLER , PA | CP TO MAKES CHGS; ERP: 2.25KW(H&V); HAAT: 165 METERS(H&V)/ 541 FEET(H&V); TL: 7 KILOMETERS WEST OF EBENSBURG, PA; 800 FEET NORTH OF HIGHWAY 422 (CAMBRIA CO.) |
| UT BMPH | 930528JB | KQMB 102.7MHZ | WALTER P. FABER, JR. MIDVALE , UT | MP (BPH-810819BE AS REINSTATED) FOR EXTENSION OF TIME 4TH REQUEST |

ATTACHMENT 2

FM BROADCAST STATION APPLICATIONS ACCEPTED FOR FILING
(MINOR CHANGE APPLICATIONS ARE SIMULTANEOUSLY ACCEPTED FOR TENDER)

| | | | | |
|---------|-----------|---------------------|--|--|
| MO BPH | -930601JB | WFBR 94.3MHZ | CWA BROADCASTING, INC. CAMBRIDGE, MO | MP (BPH-851028MJ AS MOD) FOR EXT OF TIME 3RD REQUEST |
| MS BPH | -930513IB | WDFX 98.3MHZ | BOLIVAR BROADCASTING CLEVELAND, MS | MOD OF CP(BPH-911220MD) TO MAKE CHANGES: TL: THE PROPOSED SITE IS LOCATED 0.9KM EAST OF THE INTERSECTION OF U.S. HWY 61 AND TOWNSHIP RD., IN MOUND BAYOU, MISSISSIPPI. |
| MT BTCH | -930526GE | KDZN 96.5MHZ | MAGIC AIR COMMUNICATIONS CO. GLEN DIVE, MT | VOL TC OF MAGIC AIR COMMUNICATIONS COMPANY FROM BURT H. OLIPHANT, PEGGY S. OLIPHANT, L. BRENT OLIPHANT, JEFFREY S. OLIPHANT AUX FORM 315 ATTY: JOHN R. WILNER |
| NJ BPH | -930519IE | WJNN 106.7MHZ | JEANNE T. HAEFNER NORTH CAPE MAY, NJ | MOD OF CP (BPH-880727MC) TO MAKE CHGS; CHG: HAAT: 71 METERS (H&V) |
| NY BPH | -930510IC | WDCZ 102.7MHZ | KIMTRON, INC. WEBSTER, NY | CP TO MAKE CHANGES: ERP: 3.0 KW (H&V) |
| SC BALH | -930528GG | WSSX-FM 95.1MHZ | FAIRCOM CHARLESTON INC. CHARLESTON, SC | VOL AL FROM FAIRCOM CHARLESTON INC TO DIXIE COMMUNICATIONS. INC AUX FORM 314 ATTY: (ASNR) LEE W. SHUBERT ATTY: (ASNE) JERROLD D. MILLER ASNE ADDRESS: 409 COLEMAN BOULEVARD; MT. PLEASANT, SC 29464 |
| TX BPH | -930528IB | KRJT-FM 100.7MHZ | BOWIE NOCONA BROADCASTING CO., INC. BOWIE, TX | CP TO MAKE CHGS; CHG: ERP: 6.25 KW (H&V); HAAT: 132.6 METERS (H&V); CHANGE CLASS TO C3 |
| VA BTCH | -930601GE | WVGO 106.5MHZ | WVGO LICENSE LIMITED PARTNERSHIP RICHMOND, VA | VOL ACQUISITION OF NEGATIVE CONTROL BY BRUCE R. SPECTOR ET AL THRU PURCHASE OF STOCK BY BRUCE R. SPECTOR FORM 316 |
| VA BTCH | -930601GF | WDCK 96.5MHZ | WDCK LICENSE LIMITED PARTNERSHIP WILLIAMSBURG, VA | VOL ACQUISITION OF NEGATIVE CONTROL BY BRUCE R. SPECTOR, ET AL THRU PURCHASE OF STOCK BY BRUCE R. SPECTOR FORM 316 |
| VA BTCH | -930601GH | WUSQ-FM 102.5MHZ | BENCHMARK RADIO ACQ. FUND II LTD. WINCHESTER, VA | VOL TC OF BENCHMARK RADIO ACQUISITION FUND II L.P. FROM BRUCE R. SPECTOR, JOSEPH L. MATHIAS, IV, CALVIN SUTLIFF, JR. AND C. PHILLIP RAINWATER TO BRUCE R. SPECTOR (NEGATIVE CONTROL) FORM 316 ATTY: PETER TANNENWALD |
| VT BPH | -930514IC | WWGT 96.7MHZ | LAKESIDE BROADCASTING CORPORATION VERGENNES, VT | MOD OF CP (BPH-910822MB) TO MAKE CHGS.; CHG ERP: 3.4 KW(H&V) |

ATTACHEMENT 3



Bowie
817-872-2288

P.O. BOX 1080

BOWIE, TEXAS 76230

Nocona
817-825-3240

DECLARATION

I, Everett C. Mason, do hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, recollection and belief:

1. I am the President of Bowie-Nocona Broadcasting Co., Inc. (Bowie-Nocona). I have reviewed the foregoing Petition for Immediate Reconsideration, and the representations therein are true and correct to the best of my knowledge, recollection and belief.

2. Bowie-Nocona has filed an application to implement its upgrade of KRJT-FM to a Class C3 station. Upon grant of that application, Bowie-Nocona will construct the facility authorized. Bowie-Nocona has not abandoned its interest in its Class C3 allotment.

3. On May 18, 1993, I received a telephone call from a man who identified himself as Ken Austin of KFXT(FM). Mr. Austin asked me what my intention was for KRJT-FM's upgrade, and I told him we intended to file our application shortly.



Everett C. Mason

7 - 

ATTACHMENT 4

239
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

FCC MAIL SECTION

1 APR 1993

APR 5 3 39 PM '93

Central Oklahoma Radio Corporation
c/o Mr. Jeffery D. Southmayd
Southmayd & Miller
1233 20th Street NW
Washington, D.C. 20036

IN REPLY REFER TO

1800B3-DEB

KEFX; Sulphur, Oklahoma
In re: Central Oklahoma Radio Corp.
BPH-921023IB

Dear Mr. Southmayd:

This letter in reference to the above-captioned minor change application filed on behalf of Central Oklahoma Radio Corp., the licensee of station KFX, Sulphur, OK. This application seeks to increase the facilities of that station to Class C2 on Channel 265, as permitted by Docket 91-343.

The transmitter site proposed in this application conflicts with the Class C3

states that, "[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment." See Appendix B in the Report and Order in MM Docket No. 91-347, 7 FOC Rcd 5074, 57 Fed. Reg. 34872, released July 27, 1992. This letter constitutes your opportunity for corrective amendment pursuant to 47 C.F.R. § 73.3522(a) (6).

Failure to correct all tender and acceptance defects within the thirty days from the date of this letter will result in the dismissal of the application with no further opportunity for corrective amendment pursuant to 47 C.F.R. § 73.3564(a). Please note that any amendment must be submitted to the Office of the Secretary in triplicate and signed in the same manner as the original application.

Sincerely,

A handwritten signature in black ink that reads "Dennis Williams". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

cc: Lechman & Johnson, Inc.

ATTACHMENT 5

PAGE 1543 OF SERVICE *FM*

BAPS FACILITY/APPLICATION INFORMATION REPORT

FROM 39/01/01 TO 93/06/01

BAP020-01
PAGE 5090

APP-ARM CP-APP-ARM TYPE REC'D ACCEPT PN-ACC PETITN LOREL CUTOFF TONHEAR FRHEAR FINAL-DTE DOCKET PRIOR-ARM BAND CP-EXP

| | | | | | | | | | |
|----------|----------|----|--------|--------|--------|--------|----|----|--------|
| 910401J2 | 871124MJ | P | 910401 | 910401 | 910418 | 910711 | 60 | 00 | 920111 |
| 900122ND | | AP | 900122 | 900122 | 900213 | 900416 | 60 | 00 | |
| 871124MJ | | P | 871124 | 880701 | | 890309 | 60 | 02 | 900909 |

MEMPHIS AMBASSADOR

880730

880930

88-485

ATTACHMENT 6

SOUTHMAYD & MILLER

DOCKET FILE COPY ORIGINAL **ORIGINAL**

1230 Tennessee Street, N.W.
Second Floor
Washington, D.C. 20036
Telephone: (202) 331-4100
Telecopier: (202) 331-4123

April 28, 1993

ATTACHMENT 7

332
Pink

FCC MAIL ROOM COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

APR 5 4 03 PM '93 APR 1993

IN REPLY REFER TO:
1800R2-LD (DNR)

I strongly encourage you to consult with your engineering and legal counsel on this matter as soon as possible.

Sincerely,

Dennis Williams

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

DB

cc: Fletcher, Heald & Hildreth